

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRELL K. WHITTINGTON,

No. C-04-1539 MMC

Plaintiff,

**ORDER DENYING PLAINTIFF'S MOTION
FOR RELIEF FROM JUDGMENT**

v.

(Docket No. 46)

OWENS-ILLINOIS,

Defendant.

Before the Court is the motion filed January 30, 2007 by plaintiff Darrell K. Whittington, seeking relief, pursuant to Rule 60(b)(1) of the Federal Rules of Civil Procedure, from the Court's March 29, 2005 order and judgment dismissing the instant action for failure to prosecute, as well as from the Court's February 7, 2006 order denying his letter brief to reopen the action.

To the extent plaintiff challenges the March 29, 2005 order and judgment, his motion is untimely. Any motion brought pursuant to Rule 60(b)(1) must be filed "not more than one year after the judgment, order, or proceeding was entered or taken." See Fed. R. Civ. P. 60(b).

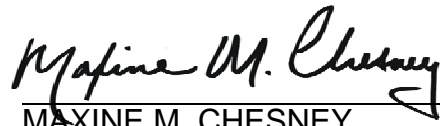
To the extent plaintiff challenges the February 7, 2006 order, plaintiff has not demonstrated any basis for setting aside such order.

1 Accordingly, plaintiff's motion for relief from judgment is hereby DENIED.

2 This order terminates Docket No. 46.

3 **IT IS SO ORDERED.**

4 Dated: February 1, 2007



MAXINE M. CHESNEY
United States District Judge